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[Additional Counsel Appear on Signature Pages]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTHERN CALIFORNIA
SAN JOSE DIVISION

IN RE: LENOVO ADWARE LITIGATION

This Document Relates to All Cases

Case No. 5:15-md-02624-RMW

STIPULATION AND ~~PROPOSED~~ CASE
MANAGEMENT ORDER NO. 2

1 This consolidated MDL litigation includes 28 actions originally filed in nine judicial districts.
2 There are over 100 plaintiffs from 33 states, who have asserted, collectively, a wide variety of federal
3 and state statutory claims, and numerous common law claims arising under a number of different state
4 laws. The four defendants, Superfish, Inc.; Lenovo (United States), Inc. (“Lenovo”); Lenovo Holding
5 Company, Inc.; and Lenovo Group Limited, are located in California, North Carolina, Hong Kong, and
6 Beijing.

7 Since the litigation was consolidated and transferred to this Court for pretrial proceedings, the
8 parties, through their respective counsel, have been discussing ways to streamline the litigation to allow
9 it to proceed efficiently and expeditiously without unreasonable impairment to the rights of any plaintiff,
10 absent class member, or defendant. Through this stipulation, the parties propose two tolling measures
11 designed to streamline this litigation.

12 First, Lenovo represents that its affiliates Lenovo Holding Company, Inc. and Lenovo Group
13 Limited are holding companies with no substantive involvement in any of the acts alleged in any of the
14 28 complaints filed in this litigation. Lenovo also represents that it has sufficient assets to satisfy any
15 judgment or fund any settlement based on the allegations in any of the 28 complaints filed in this
16 litigation. In light of those representations, the undersigned parties have agreed to narrow the scope of
17 the claims to be asserted in plaintiffs’ Consolidated Amended Complaint (the “Consolidated
18 Complaint”) such that neither Lenovo Holding Company, Inc., nor Lenovo Group Limited will need to
19 be named as defendants, subject to the agreement detailed below.

20 Second, the parties recognize that the named plaintiffs and members of the proposed classes may
21 have potential claims that could be brought against Lenovo and Superfish that arise under the laws of
22 many different states and territories. The parties anticipate that the simultaneous litigation of many
23 different state law claims would add considerable time and expense to the litigation—including at the
24 motion to dismiss, class certification, summary judgment, and trial stages—without necessarily helping
25 to materially advance the overall litigation toward a full and final resolution.

26 The parties have thus conferred and agree that the litigation shall proceed initially on the basis of
27 federal, New York, and California law only, with potential claims arising under other states or
28 territories’ laws to be tolled as further detailed below. The parties agreed to this approach because there

1 is a New York choice-of-law provision that may apply to approximately half of the class, plaintiffs may
 2 argue for the nation-wide application of California law, and the New York and California claims are
 3 fairly representative of corresponding causes of action under other states' laws. Similar approaches are
 4 underway in two other pending multidistrict litigations, reflecting the increasing recognition that this
 5 type of approach may materially reduce the demands on judicial resources, particularly during the early
 6 stages of multidistrict litigation. *See generally In re: Lumber Liquidators Chinese-Manufactured*
 7 *Flooring Products Marketing, Sales Practices and Products Liability Litigation*, MDL No. 1:15-md-
 8 02627-AJT (E.D. Va.); *In re Anthem Data Breach Litigation*, Case No. 5:15-md-02617 (N.D. Cal.).

9 Subject to Court approval, the parties hereby stipulate and agree as follows:

10 1. Subject to paragraph four below, plaintiffs will not name Lenovo Holding Company, Inc.
 11 or Lenovo Group Limited as a defendant in the Consolidated Complaint or in any future amended
 12 complaint.

13 2. All claims that have been asserted or could have been asserted against Lenovo Holding
 14 Company, Inc., or Lenovo Group Limited based on the facts alleged in any past or present complaint in
 15 this litigation are tolled during the pendency of this litigation.

16 3. Any otherwise discoverable information that is in the possession, custody, or control of
 17 Lenovo Holding Company, Inc. or Lenovo Group Limited shall be deemed to be in the possession,
 18 custody, or control of Lenovo and shall be produced if responsive to a discovery request served by
 19 plaintiffs on Lenovo, subject to any objections Lenovo may have to that discovery on other, unrelated
 20 grounds. For the purposes of both discovery and trial, any employee of Lenovo Holding Company, Inc.
 21 or Lenovo Group Limited shall be deemed to be an employee of Lenovo.

22 4. If, during the course of the litigation, plaintiffs uncover facts or evidence that supports
 23 naming either Lenovo Holding Company, Inc. or Lenovo Group Limited as a defendant, plaintiffs shall
 24 have the right to file a further amended complaint for that purpose. Neither of those entities, nor the
 25 undersigned defendants, shall oppose the filing of a further amended complaint if done for that limited
 26 purpose.

27 5. Until otherwise ordered by the Court, the Consolidated Complaint and all future
 28 pleadings shall assert on behalf of plaintiffs and the proposed class(es) only claims that arise under

federal, New York, or California law. To the extent any named plaintiff or other member of a proposed class may have a claim that relates to the subject matter of this litigation (as set forth in the present and future operative complaints filed by plaintiffs), which claim arises under the law of a state or territory other than California or New York, those claims will be tolled during the pendency of this litigation until an order of this Court directs otherwise.

SO STIPULATED.

Dated: November 9, 2015

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~~PROPOSED~~ ORDER

Pursuant to Stipulation, it is SO ORDERED.

DATED: 11/10/2015



HONORABLE RONALD M. WHYTE
UNITED STATES DISTRICT COURT JUDGE